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10/588,545	03/07/2008	Antony Lawrence Pike	7383-88964-US	8268

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CHICAGO, IL 60603-3406

EXAMINER

RODRIGUEZ, PAMELA

ART UNIT	PAPER NUMBER
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3657

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PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/588,545	Applicant(s) PIKE ET AL.	
	Examiner PAMELA RODRIGUEZ	Art Unit 3657	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01 December 2011.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ An election was made by the applicant in response to a restriction requirement set forth during the interview on ____; the restriction requirement and election have been incorporated into this action.
- 4) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 5) ☒ Claim(s) 1-46 is/are pending in the application.
- 5a) Of the above claim(s) 36-45 is/are withdrawn from consideration.
- 6) ☒ Claim(s) 1-5,8-11,14,15,17-29 and 46 is/are allowed.
- 7) ☒ Claim(s) 30-32 is/are rejected.
- 8) ☒ Claim(s) 6,7,12,13,16 and 33-35 is/are objected to.
- 9) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 10) ☒ The specification is objected to by the Examiner.
- 11) ☒ The drawing(s) filed on 02 January 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 12) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 13) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. ____. |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>02/23/07</u> . | 6) <input type="checkbox"/> Other: ____. |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Species F in the reply filed on December 1, 2011 is acknowledged. The traversal is on the ground(s) that the alleged species are all linked so as to form a single general inventive concept. Applicant contends that the inventive concept includes a system having a brake which is actuated to maintain the piston in position by an increase in hydraulic pressure in the system. And since this feature is indicated generally throughout the alleged species, all the claims and all the species should be examined together. This is not found persuasive because each of the delineated species all contain unique structural features with regards to either their piston or brake structures. Each of these unique structural features present in the different species thus constitute separate and distinct inventions.

The requirement is still deemed proper and is therefore made FINAL.

2. Note: Applicant also argued that his election of Species F should also encompass Figures 8 and 9, in addition to Figures 6 and 7, which the examiner outlined as making up Species F. In response to this, according to page 18 lines 7-27 of applicant's specification, Figures 8 and 9 are part of another embodiment encompassing support element 150 and are not just different views of Figures 6 and 7, as alluded to by applicant. Thus, Figures 8 and 9 are not grouped with the Species F embodiment at all.

3. Applicant also contends that all Claims 1-46 read on the elected Species F embodiment. The examiner respectfully disagrees. Claims 5-8, 14, 16-18, 23-29, and

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36-45 all read on different embodiments of applicant's invention and do not contain the same structural features for the piston and brake structures as presented in elected Species F. However, as outlined below, Claim 1 is allowable and because of this, Claims 5-8, 14, 16-18, and 23-29 are rejoined therein for examination. Claims 36-45 remain non-elected.

4. Claim 1 is allowable. The restriction requirement, as set forth in the Office action mailed on December 1, 2011, has been reconsidered in view of the allowability of claims to the elected invention pursuant to MPEP § 821.04(a). **The restriction requirement is hereby withdrawn as to any claim that requires all the limitations of an allowable claim.** Claims 5-8, 14, 16-18, and 23-29, directed to a non-elected Species are no longer withdrawn from consideration because the claim(s) requires all the limitations of an allowable claim. However, claims 36-45, directed to a non-elected Species are withdrawn from consideration because they do not require all the limitations of an allowable claim.

In view of the above noted withdrawal of the restriction requirement, applicant is advised that if any claim presented in a continuation or divisional application is anticipated by, or includes all the limitations of, a claim that is allowable in the present application, such claim may be subject to provisional statutory and/or nonstatutory double patenting rejections over the claims of the instant application.

Once a restriction requirement is withdrawn, the provisions of 35 U.S.C. 121 are no longer applicable. See *In re Ziegler*, 443 F.2d 1211, 1215, 170 USPQ 129, 131-32 (CCPA 1971). See also MPEP § 804.01.

Drawings

5. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character “208” has been used to designate both a fluid and flexible portion in Figure 17 (and also on page 20 lines 15 and 33). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either “Replacement Sheet” or “New Sheet” pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

6. The drawings are objected to because in Figure 19, element numeral 236 located in the cylinder should be labeled –235—to be consistent with the specification and to avoid the objection of the same element numeral “236” being used to designate two separate elements within the drawing. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as “amended.” If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must

be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

7. The abstract of the disclosure is objected to because in the last line the word "means" is used. Correction is required. See MPEP § 608.01(b).
8. The disclosure is objected to because of the following informalities: on page 11, there is no description for Figures 29 and 30 provided, on page 13 line 14 the term "table 26" should read --table 28-- to be consistent with the Figure 1B drawing, on page 16 line 21, the term "cylinder 122" should read --cylinder 112-- to be consistent with the drawings, on page 17 line 2 the word "potion" should read --portion--, on page 18 in the last line, the term "Figure 10" should read --Figure 11--, as that is what is described in the paragraph, in that same line, the term "150" should read just --150-- to be consistent with the drawings, the same issue occurs on page 19 line 2, also on page 19 in line 21, the term "seals 189" should read --seals 197-- to be consistent with the drawings, on page 20 line 10, the term "Figure 15" should read --Figure 17--, as that is what the

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paragraph describes, along these same lines, there is no description within the specification provided for Claims 15 and 16 (as the later reference to Figure 16 on page 21 actually refers to Figures 18-20 instead), on page 21 line 16, the term "Figures 16-18" should read --Figures 18-20--, as that is what is described—in the paragraph, on page 22 line 24 "Figure 18" should read --Figure 20--, as that is what that paragraph describes, also on page 22 in line 31, "Figure 19" should read --Figure 21--, on page 24 line 7, "Figure 20" should read --Figure 22--, also on page 24 line 30, "Figure 21" should read --Figure 23--, on page 25 line 31, "Figure 21" should read --Figure 23--, on page 26 line 12 "Figure 22" should read --Figure 24--, on page 27 line 11 "Figure 23" should read --Figure 25--, on page 28 line 19, "Figure 24" should read --Figure 26--, on page 29 line 26, "Figures 25 and 26" should read --Figures 27 and 28--, and on page 31 line 1, "Figures 27 and 28" should read --Figures 29 and 30-- .

Appropriate correction is required.

Claim Objections

9. Claims 6, 7, 12, 13, and 16 are objected to because of the following informalities: in line 1 of Claim 6, the phrase "the surface contact portion" should read --each surface contact portion—to avoid a potential 112 second paragraph rejection, in line 1 of Claim 7, the term "the surface contact portion" should read --each surface contact portion—and in line 2 of Claim 7, the term "the piston" should read --each piston--, in line 2 of Claim 12, the term "the piston" should read --each piston--, in line 4 of Claim 13, the term "the piston" should read --each piston--, and in line 2 of Claim 16, the

phrase “the movement of the surface contact portion” should read –a movement of a surface contact portion—to avoid a 112 second paragraph rejection. Appropriate correction is required.

Claim Rejections - 35 USC § 102

10. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

11. Claims 30-32 are rejected under 35 U.S.C. 102(b) as being anticipated by German Patent No. DE 4119762 to Sauthoff.

Regarding Claim 30, Sauthoff discloses an adjustable support (see Figure 1) for supporting a structure 6 on an underlying surface 4 having all the features of the instant invention including: a piston cylinder assembly 8/3/5, the piston 8 being moveable relative to the cylinder 3/5 with the piston 8 being connected with the structure 6 (see Figure 1) and the other 5 being associated with a contact portion (see Figure 1 and the lowermost part of cylinder 5) operative to engage the underlying surface 4, and a brake B for inhibiting movement of the piston 8 relative to the cylinder 3/5, the brake B being operative in response to the application of predetermined loading conditions to a portion of the support via the handle 7 (see the translated abstract).

Regarding Claim 31, Sauthoff further disclose that the brake B is operative in response to a threshold loading being applied to that portion of the piston cylinder

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assembly 5 that is associated with the contact portion (note: element 12 is a ram and to some extent, the brake, while being actuated by piston 8, does move in response to the resistance loading being applied to the lower contact portion of cylinder 5. In other words, the brake can only operate as much as ram 12 and its loading will allow).

Regarding Claim 32, Sauthoff discloses a braking system for a piston and cylinder assembly 8/3/5 comprising a brake B adapted to be actuated by an increase in fluid pressure within the cylinder 3/5 (via handle 7 which generates a "fluid pressure" to actuate the piston 8).

Allowable Subject Matter

12. Claims 1-5, 8-11, 14, 15, 17-29, and 46 are allowed.

13. Claims 6, 7, 12, 13, 16, and 33-35 are objected to as outlined above or as being dependent upon a rejected base claim, but would be allowable if rewritten to overcome the above objections or in independent form including all of the limitations of the base claim and any intervening claims.

14. The following is a statement of reasons for the indication of allowable subject matter: With regards to independent Claims 1 and 46, while Sauthoff discloses a support having a piston, cylinder, a brake for maintaining the piston in a position that is stable relative to the piston, and wherein the piston and cylinder are arranged so that a loading associated with the structure effects an adjustment of the support element, Sauthoff does not disclose that an increase in hydraulic pressure within the cylinder, effected by the loading associated with the structure, activates the brake nor that the

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loading associated with the structure activates the brake if the moveability of a surface contact portion of the support element is reduced below a threshold value.

It is for these reasons that applicant's Claims 1 and 46 define over the prior art of record.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

U.S. Patent No. 3,560,033 to Barkus, U.S. Patent No. 3,825,244 to Bauer, U.S. Patent No. 3,865,341 to Fortnam et al., and U.S. Patent No. 4,415,135 to French all disclose support braking systems similar to applicant's.

16. Any inquiry concerning this communication or earlier communications from the examiner should be directed to PAMELA RODRIGUEZ whose telephone number is (571)272-7122. The examiner can normally be reached on Monday - Wednesday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Rob Siconolfi can be reached on 571-272-7124. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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